

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARVIN DAVIS,	§	
	§	No. 126, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0706005250
Appellee.	§	

Submitted: March 22, 2010

Decided: March 31, 2010

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 31<sup>st</sup> day of March 2010, it appears to the Court that:

(1) On March 5, 2010, the Court received Marvin Davis’ notice of appeal from the Superior Court’s order dated January 29, 2010, docketed on February 2, 2010, denying his motion for postconviction relief. Pursuant to Supreme Court Rule 6, Davis’ appeal from the February 2, 2010 order was due to be filed on or before March 4, 2010.<sup>1</sup>

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<sup>1</sup> See Del. Supr. Ct. R. 6(a)(iii) (providing for thirty days to appeal “after entry upon the docket of a judgment or order in any proceeding for post-conviction relief”).

(2) On March 5, 2010, the Clerk issued a notice directing that Davis show cause why the appeal should not be dismissed as untimely filed.<sup>2</sup> In his response to the notice, Davis maintains that the untimeliness of his notice of appeal should be excused on the basis that he was “not aware” of the February 2, 2010 order until February 10, 2010 when he received the order in the mail. In its answer, the State contends that Davis’ receipt of the February 2, 2010 order on February 10, 2010 cannot serve to excuse the untimely appeal. We agree with the State’s position.

(3) “[T]he appellate jurisdiction of this Court rests wholly upon the perfecting of an appeal within the period of limitations fixed by law.”<sup>3</sup> Under Delaware law, a notice of appeal must be received by the Office of the Clerk within the applicable time period to be effective.<sup>4</sup> Unless an appellant can demonstrate that the failure to timely file a notice of appeal is attributable to court-related personnel, an untimely appeal cannot be considered.<sup>5</sup>

(4) In this case, Davis has not demonstrated that his failure to timely file a notice of appeal is attributable to court-related personnel.

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<sup>2</sup> Del. Supr. Ct. R. 29(b).

<sup>3</sup> *Riggs v. Riggs*, 539 A.2d 163 (Del. 1988) (quoting *Fisher v. Biggs*, 284 A.2d 117, 118 (Del. 1971)).

<sup>4</sup> Del. Supr. Ct. R. 10(a); *Carr v. State*, 554 A.2d 778 (Del. 1989).

<sup>5</sup> *Bey v. State*, 402 A.2d 362, 363 (Del. 1979).

Assuming he did not receive the February 2, 2010 decision order February 10, 2010, Davis had twenty-two days remaining to file the notice of appeal. Under these circumstances, when Davis had ample time to file a timely notice of appeal, his failure to do so cannot be excused.<sup>6</sup>

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that the appeal is DISMISSED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>6</sup> *Harris v. State*, 2008 WL 5234414 (Del. Supr.); *Hitchens v. State*, 1991 WL 235426 (Del. Supr.).